BANDAR UTAMA DEVELOPMENT SDN BHD & ANOR *a*

v.

LEMBAGA LEBUHRAYA MALAYSIA & ANOR

HIGH COURT MALAYA, SHAH ALAM *b*
VISU SINNADURAI J
[ORIGINATING MOTION NO: MT2-25-89-96]
2 AUGUST 1997

ADMINISTRATIVE LAW: *Judicial review - Certiorari, application for leave - Guiding principles - Whether applications must not be frivolous or vexatious - Whether must show existence of public wrong - Rules of the High Court 1980, O. 53* *c*

ADMINISTRATIVE LAW: *Judicial review - Certiorari, application for leave - Application to quash decision of highway authority on construction of highway interchange - Applicable law - Whether applicants' legal rights adversely affected by decision of authority - Whether decision tainted with procedural impropriety, illegality or irrationality - Whether decision a managerial decision - Whether amenable to judicial review* *d*

ADMINISTRATIVE LAW: *Judicial review - Certiorari, application for leave - Application to quash decision of highway authority on construction of highway interchange - Locus standi - Whether applicants lacked locus standi - Applicants' cause of action - Whether properly against the Government* *e*

The first respondent herein is an authority established under the Highway Authority (Incorporated) Act 1980 ('the Act') and is responsible for the supervision and execution of the design, construction and maintenance of highways under the Act. Pursuant to its statutory functions thus, the first respondent proposed to construct the so-called Damansara-Puchong Highway interchange, and in consequence, granted the concession for the construction thereof to the second respondent. The applicants, the developer and owner respectively of the Bandar Utama township, alleged that the proposed interchange would cause inconvenience to the residents of the township, and so appealed to the first respondent to re-align the configuration of the interchange. By a letter dated 16 November 1966, the first respondent informed the applicants that the Technical Committee of the Privatisation of Damansara-Puchong Highway had considered the apllicants' appeal but had rejected the same. Dissatisfied, the applicants applied to the High Court for leave to apply for an order of *certiorari* to quash, firstly, the first respondent's 'decision' to reject the appeal vide letter of 16 November 1966, and secondly, the first *f* *g* *h* *i*

respondent's decision to approve the interchange configuration. The first respondent opposed the application and argued *inter alia* that (i) the applicants had no *locus standi* (ii) the letter dated 16 November 1996 in its true sense was not a 'decision' and therefore not amenable to judicial review, and (iii) the proper party to be sued was the Government and not the respondents.

Held:

[1] The law relating to the application for leave to apply for an order for *certiorari* is governed by O. 53 Rules of the High Court 1980.

[2] Though the granting of leave is discretionary, the court is nonetheless governed by certain principles. The guiding principles ought to be that the applicants must show *prima facie* that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application.

[3] One important circumstance when *certiorari* will lie is when the complainant's rights, be it statutory or common law, are adversely affected by the decision or action of an authority.

[3a] The applicants have not challenged that any of their rights have been affected by the construction of the proposed highway interchange. What the applicants contended, basically, is that the construction of the proposed interchange had caused them inconvenience and discomfort. Merely because the proposed changes will entail some inconvenience to persons residing in the Bandar Utama area, however, does not by itself render the construction of the interchange unreasonable or void. Clearly, in such a situation, where no legal rights are affected, the remedy of *certiorari* is inappropriate.

[4] The design, construction and maintenance of highways are determined by the Government, whereas the first respondent's powers are merely to supervise and to execute these matters which had already been determined. The applicants' cause of action, if any, is therefore against the Government and not against the first respondent. The applicants have thus cited the wrong party as the respondent.

[4a] Even if it could be said that the first respondent had the powers to make modifications to the design of the highway, the applicants have failed to establish an arguable case that the first respondent had acted unlawfully, or had failed to follow certain procedures, or had exceeded their powers. Judicial review is a remedy of public wrong. No public wrong had been shown to have been committed by the first respondent such as to make its decision amenable to judicial review.

[5] The applicants are only challenging the rejection of their counter proposals to modify the interchange. The facts showed that the counter proposals were considered by the relevant authorities, and only after careful study and consideration had the proposals been rejected. No procedural impropriety, illegality, or irrationality, could thus be imputed to the decision to reject the applicants' proposals. The said decision to reject, in any case, is a 'managerial decision' and is not amenable to judicial review.

[Application dismissed; leave refused.]

Cases referred to:

Regina v. Secretary of State For Employment, ex p Equal Opportunities Commission [1995] AC 1 ***(refd)***

R v. Secretary of State, ex p Begum [1990] COD 107 ***(refd)***

Tuan Haji Sarip Hamid & Anor v. Patco Malaysia Bhd [1995] 3 CLJ 627 ***(refd)***

Association of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association [1990] 2 CLJ 734 ***(refd)***

Dr Amir Hussein bin Baharuddin v. Universiti Sains Malaysia [1989] 3 MLJ 298 ***(refd)***

R v. Inland Revenue Commissioners, ex parte National Federation of Self Employed and Small Businesses [1982] AC 617 ***(refd)***

Chan Hiang Leng Colin & Ors v. Minister for Information and The Arts [1996] 1 SLR 609 ***(refd)***

Council of Civil Service Unions v. Minister for the Civil Service [1984] 3 All ER 935 ***(foll)***

Rama Chandran v. Industrial Court of Malaysia [1997] 1 CLJ 147 ***(refd)***

Ghazi bin Mohd Sawi v. Mohd bin Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 CLJ 333 ***(dist)***

Datuk Bandar Kuala Lumpur v. Zain Azahari bin Zainal Abidin [1997] 2 CLJ 248 ***(dist)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan [1996] 1 CLJ 665 ***(dist)***

Kumpulan Perangsang Selangor Bhd v. Zaid bin Hj Mohd Noh [1997] 2 CLJ 11 ***(dist)***

Harris Solid State (M) Sdn Bhd & Ors v. Bruno Gentil Pereira [1996] 4 CLJ 747 ***(dist)***

Legislation referred to:

Highway Authority Malaysia (Incorporation) Act 1980, s. 11

Rules of the High Court 1980, O. 53

Other sources referred to:

Judicial Review of Administrative Actions, de Smith, Woolf & Jowell, 1995, 5th edn, pp 662-663

Halsbury's Laws of England, 1989, 4th edn, reissue, para 112

Judicial Remedies in Public Law, Litigation Library, Clive Lewis, Sweet & Maxwell, 1992, p 230

For the applicants - M/s Kiru & Yong
For the 1st respondent - M/s Kassim, Tadin, Wai & Co
For the 2nd respondent - M/s Ching, Tan & Assoc

JUDGMENT

Visu Sinnadurai J:

2 August 1997. The following judgment was delivered by Justice Dato' Dr Visu Sinnadurai.

In this application, the applicants sought leave to apply for an order for *certiorari* under O. 53 of the Rules of the High Court 1980.

The applicants initially sought leave to quash the "approval of the proposed Damansara-Puchong highway interchange configuration at Jalan Damansara linking Bandar Utama by the first respondent" (the Lembaga Lebuhraya Malaysia) – see encl. (1).

However, by a subsequent application (encl. 10), the applicant sought to amend the main application by seeking the following relief:

> An order of *certiorari* directed to the first respondent to quash the decision dated 16 November 1996 communicated by the first respondent on 19 November 1996 and/or the approval by the first respondent to approve the interchange configuration of the proposed Damansara-Puchong highway at Jalan Damansara linking it to Bandar Utama.

As there appeared to be some urgency on the matter, especially since the construction of the highway had already commenced, the application for leave was heard on an *inter parte* basis.

The Facts

The first applicant, Bandar Utama Development Sdn Bhd is the developer of a commercial and residential development known as 'Bandar Utama', whilst the second applicant, Bandar Utama City Corporation Sdn Bhd, is the landowner of all the commercial properties and the undeveloped residential units of Bandar Utama.

The first respondent, Lembaga Lebuhraya Malaysia, a body established under the Highway Authority (Incorporated) Act 1980, is the authority responsible for the supervision and execution of the design, construction and maintenance of highways under the said Act.

The second respondent, Lingkaran Trans Kota Sdn Bhd, is a construction company who was granted the concession for the construction of the

privatisation of the Damansara-Puchong highway. This proposed highway, involves the stretch of Jalan Damansara passing through certain junctions at Bandar Utama.

The first applicant, being unhappy with certain of the proposed highway's interchange configuration, especially those near Bandar Utama, had appealed to the first respondent to reconsider their decision, and had also submitted certain counter proposals, based on findings of a traffic consultant.

According to the applicant's traffic consultant, the existing three junctions at Bandar Utama (with two right exits to Jalan Damansara) were able to satisfy 99% of the peak traffic, whilst the proposed highway interchange configuration at Junction B (providing only one right access) would adversely affect the traffic flow by reducing it to 47%.

By a letter dated 16 November 1996, the first respondent informed the applicants that the Technical Committee of the Privatisation of Damansara-Puchong highway had considered the applicant's objections and had rejected the applicants' appeal and counter proposals.

The applicants then instituted the present action. The applicants argue that as landowners and developers of Bandar Utama, they are aggrieved parties as the continued development of Bandar Utama will be adversely affected by the proposed interchange configuration. As the registered proprietors of the commercial properties within Bandar Utama, the second applicant claimed that they would be affected by any negative impact on the traffic flow by the respondents' highway interchange configuration at Junction B.

Applicants' Arguments

The applicants' argue that the proposed highway interchange configuration will have a negative impact on the traffic dispersal from Bandar Utama, and that the first respondent had failed to take into account, relevant matters such as capacity of the existing roads in designing the proposed configuration.

It was also argued by the applicants that the first respondent in communicating to the applicants the decision to reject the applicants' appeal by their letter dated 16 November 1996 had not given any reasons for the rejection.

Further, it was said, that it was unreasonable on the part of the first respondent not to have taken into account the applicants' traffic report.

Respondents' Arguments

The first respondent raised several grounds in opposing the application for leave, namely:

(i) that the applicants had no *locus standi;*

(ii) that the applicants had no sufficient interest;

(iii) that the first respondent's letter dated 16 November 1996 was not a "decision" in the relevant sense for purposes of judicial review;

(iv) that to compel the first respondent to accept the applicants' counter proposals was indirectly to compel the government;

(v) that even if the applicants were granted leave, in the final analysis, it would be an exercise in futility;

(vi) that the proper party to be brought was the Government of Malaysia; and

(vii) that the first respondent had acted fairly and reasonably.

Of particular importance are grounds (iii) and (vi). It was argued that the letter of 16 November 1996 was not a decision for purposes of judicial review. The first respondent was only one of the constituent members of the Technical Committee. The Technical Committee had deliberated on the applicants counter proposals and only thereafter did it reject the proposal. As far as the first respondent was concerned, it merely communicated the decision of the Technical Committee to the applicants. In the premises, it was therefore submitted that the letter of 16 November 1996 did not become a "decision" merely because the applicants were "invited" to submit their counter proposals, nor by the fact that the first respondent had informed the applicants that their appeal had been rejected.

It was further argued, relying on a similar argument raised by counsel in the House of Lords' decision of *Regina v. Secretary of State For Employment Ex Parte Equal Opportunities Commission* [1995] AC 1, that the letter of 16 November 1996 could not in principle amount to a decision because in the absence of a relevant duty on the part of the first respondent, or an alleged refusal to carry out such a duty, an application for judicial review, could not be founded.

It was further stressed by the first respondent, that, in fact, the original decision on the interchange configuration had been made by the government and not by the first respondent. Therefore, the applicants ought to have sued the government and not the first respondent. However, as the government was not made a party to these proceedings, the application ought to be struck off. As far as the second respondent was concerned, the second respondent was merely granted the concession to construct the highways under the concession

agreement made between the government and the second respondent. As such, any matters pertaining to the interchange configuration that had been approved by the government, as being part and parcel of the concession agreement, ought to have been addressed to the government and not against the second defendant. Since the Government was not a party in these proceedings, the applicants' grievance was again directed to the wrong party.

Furthermore, it was said that the decision of the government pertaining to the interchange configuration were not matters for the courts to determine unless some statutory provisions had been breached. Otherwise, it would involve the courts in making a decision on the merits of the applicants' counter proposals, and in balancing the pros and cons of the counter proposals. It was submitted that the courts were not permitted to do this, as it would involve an usurpation of the powers and responsibilities that rightly belonged to the government and not the first respondent.

Taking the above matters into consideration, it was submitted that the applicants had not made out a *"prima facie"* case of reasonable suspicion or "an arguable case" and that the application was "frivolous and vexatious", and therefore the application ought to be dismissed with costs.

The Law Applicable At Leave Stage

The law relating to the application for leave to apply for an order for *certiorari* is governed by O. 53 of the Rules of the High Court 1980.

Generally such an application is made *ex parte*, but it may, at the direction of the court be heard on a *inter parte* basis. In the case of *R v. Secretary of State ex parte Begum* [1990] COD 107, the English Court of Appeal observed as follows:

> If on considering the papers, the judge comes to the conclusion that he really does not know whether there is or is not an arguable case, the right course is for the judge to invite the putative respondent to attend and make representations as to whether or not leave should be granted. That *inter partes* leave hearing should not be anywhere near so extensive as a full substantive judicial review hearing. The test to be applied by the judge at that *inter partes* leave hearing should be analogous to the approach adopted in deciding whether to grant leave to appeal against an arbitrator's award, ... namely: if, taking account of a brief argument on either side, the judge is satisfied that there is a case fit for further consideration, then he should grant leave.

This observation was quoted with approval by the Federal Court in *Tuan Haji Sarip Hamid & Anor v. Patco Malaysia Bhd* [1995] 2 MLJ 442.

Though the granting of leave is discretionary, in an application for leave, however, the court is governed by certain principles. These principles are now generally well established. In *Association of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1990] 2 CLJ 734 Ajaib Singh SCJ in delivering the judgment of the Supreme Court observed at p. 229:

> The guiding principles ought to be that the applicants must show *prima facie* that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application.

In *Dr Amir Hussein bin Baharuddin v. Universiti Sains Malaysia* [1989] 3 MLJ 298, Edgar Joseph Jr J (as he then was) observed at p. 299:

> I approach this application by reminding myself that under O. 53 r. 3, the court exercises discretion whether to grant leave to apply to judicial review. The court is here first looking only at the *ex parte* application and is concerned to see whether *prima facie* there is a genuine case for review.

His Lordship then set out the following principles as stated by Lord Diplock in *R v. Inland Revenue Commissioners, ex parte National Federation of Self Employed and Small Businesses* [1982] AC 617, at p. 644:

> If, on a quick perusal of the material then available, the court (that is the judge who first considers the application for leave) thinks that it discloses what might on further consideration turn out to be arguable case in favour of granting to the applicant the relief claimed, it ought in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion which the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.

In *Dr Amir Hussein's* case, Edgar Joseph Jr J also heard the application for leave on an *inter partes*, basis, "having regard to the importance and the novelty of the issues raised."

More recently, in *Patco's* case, referred to above, the proper test to be applied was also considered by the Federal Court. Further, in the Singapore Court of Appeal decision of *Chan Hiang Leng Colin & Ors v. Minister for Information and the Arts* [1996] 1 SLR 609, Karthigesu JA, in delivering the judgment of the Court of Appeal observed, after referring to Lord Diplock's observation in *National Federation of Self Employed*, referred to above, as follows (at p. 616):

This passage appears susceptible to two slightly different interpretations. One is that the court should quickly peruse the material put before it and consider whether such material discloses 'what might on further consideration turn out to be an arguable case'. The other is that the applicant had to make out a '*prima facie* case of reasonable suspicion'. In our view, both tests present a very low threshold and it is questionable whether there is really any difference in substance between the two interpretations.

In *R v. Commissioner for the Special Purposes of the Income Tax Acts, ex parte Stipplechoice Ltd* [1985] 2 All ER 465, the English Court of Appeal held that the applicant had shown 'a good arguable case' and has thus, 'established a *prima facie* case' for judicial review. Leave was then granted in that case despite the applicant having twice been refused leave below. It appears that in *Re Application* by *Dow Jones (Asia) Inc,* TS Sinnathuray J applied the same test of whether there is an arguable case. It is again questionable whether there is any difference between this test and the one stated in the paragraph above.

However, in the Malaysian case of *George John v. Goh Eng Wah Bros Filem Sdn Bhd & Ors* [1988] 1 MLJ 319, Lim Beng Choon J appeared to have applied the following test:

> Another requirement at this stage of the proceeding which a court has to consider is that the applicant must produce sufficient evidence to sustain a *prima facie* case that a public officer or authority that made the decision had acted unlawfully or that he or it had in its exercise of discretion acted *ultra vires* the power given to him or it under the relevant statute.

This case was relied on by Mr Reddy. In our view, if this case seeks to impose a higher threshold than that of an arguable case, then we ought not to follow it. This is because it would be against the weight of the other authorities. What is required is not a *prima facie* case, but a *prima facie* case of reasonable suspicion. If the latter can be shown, then it cannot be said that the application must necessarily fail, for there would then appear to be an 'arguable case'.

Generally, it may be said that in addition to the above tests, leave will be refused where the applications are "(i) frivolous and vexatious or hopeless; (ii) made by busybodies with misguided or trivial complaints of administrative errors; (iii) misconceived; (iv) unarguable or groundless; (v) where there is more appropriate alternative remedies; (vi) where an application for judicial review is an inappropriate procedure:" – see de Smith, Woolf and Jowell, *Judicial Review of Administrative Actions,* 5th Edn., 1995, pp. 662-663.

The Present Application

At the commencement of the hearing, counsel for the applicants correctly conceded that the application against the second respondent was misconceived, as the second respondent being merely a private company was not amenable to judicial review.

I now move on to consider whether leave ought to be granted in this application against the first respondent, the Highway Authority.

(i) Rights Of Parties

One of the important circumstance when *certiorari* will lie is when the complainant's rights, be it statutory or common law, are adversely affected by the decision or action of an authority. As pointed out in *1(1) Halsbury's Laws of England*, 4th Edn., Reissue 1989, para. 112:

> *Certiorari* and *prohibition* will issue to quash or prohibit the determination of any body or person having legal authority to determine questions affecting the common law or statutory rights or obligations of other persons as individuals.

In the present case, the applicants have not challenged that any of their **rights** had been affected by the construction of the proposed highway interchange. It should also be noted that the applicants had not challenged the construction of the entire highway. They have merely stated that they "are affected and aggrieved parties", or that they are "unhappy" with the particular interchange at Bandar Utama.

Basically what the applicants are contending is that the construction of the proposed interchange does not affect any of their established rights, but rather it will cause them an inconvenience. No authority was cited in support of the applicants' contention. It must be observed that any new change to existing roads and highways, generally will cause some advantage to certain members of the public, whilst it may cause inconvenience to others. But merely because the proposed changes will entail some discomfort or inconvenience to persons residing in the Bandar Utama area does not, by itself, render the construction of the interchange unreasonable or void. Clearly, in such a situation, where no legal rights are affected, the remedy of *certiorari* appears to be inappropriate.

(ii) Applicants' Appeal And Counter Proposals

It was suggested that the respondents' failure to consider the applicants' appeal or their counter proposals to make modifications to the proposed interchange, rendered the decision of the respondent unreasonable. But this argument is unsubstantiated and in any case, without merit. The letter written by the first

respondent dated 16 November 1996, clearly stated that the applicants' appeal and the counter proposals were carefully considered by the Technical Committee. The relevant part of the letter reads as follows:

> 2.0 Pihak Lembaga Lebuhraya Malaysia (LLM) mengucapkan terima kasih di atas cadangan balas pihak tuan dan **kami telah memberi perhatian dan pertimbangan yang serius ke atas cadangan tersebut.** Seperti yang tuan sedia maklum, pihak LLM telah memanggil satu mesyuarat khas Jawatankuasa Teknikal (Senarai keahlian seperti di Lampiran I) pada 16.11.96 dimana pihak tuan telah diberi peluang untuk membentangkan rayuan tuan kepada Jawatankuasa tersebut.
>
> **3.0 Setelah mengkaji dengan mendalam ke atas cadangan dan rayuan pihak tuan tersebut adalah dimaklumkan bahawa Jawatankuasa Teknikal Penswastaan** Lebuhraya Damansara-Puchong yang telah bermesyuarat pada 16.11.96 telah membuat keputusan dan sebulat suara tidak dapat menerima rayuan dan rayuan dan cadangan pihak tuan berkenaan. Sehubungan dengan itu, lokasi dan konfigurasi Persimpangan Bertingkat Bandar Utama (Persimpangan B) adalah kekal seperti yang telah termaktub dan ditetapkan di dalam perjanjian konsesi.
>
> [Emphasis added]

In fact, the applicants themselves instituted the present proceedings only after they were informed that the applicants' appeal and counter proposals had been rejected by the Technical Committee. I therefore fail to understand how it could now be contended that the respondents had failed to consider the applicants' objections.

(iii) Proper Authority

In *Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935, at p. 949, Lord Diplock laid down the following general principles:

> to qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:
>
> (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or
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> (b) by depriving him of some benefit or advantage which either:
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> (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn ...

For a decision to be susceptible to judicial review the decision maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned [above].

Applying the above test, there is much merit in the respondents' argument that the wrong party had been sued in the present case. There is no evidence to indicate that the applicants had a legitimate expectation, or had been given some assurance by the first respondent that no changes would be made to the existing roads in Bandar Utama. More importantly, the first respondent was not in a position to do so. The first respondent is a statutory body established under the Highway Authority Malaysia (Incorporation) Act 1980. The statutory powers bestowed on the first respondent is provided for in s. 11 of the Act. It provides that:

The functions of the authority are (a) to supervise and execute the design, constructions and maintenance of highways as determined by the government; ...

In other words, the design, construction and maintenance of highways are determined by the government, whereas, the first respondent's powers are merely to supervise and to execute these matters which had already been determined by the government. Therefore, as pointed out by the respondents, any changes, modifications to the design and the construction of the highways are determined by the government, and not the first respondent. The applicants' cause of action, if any, therefore is against the government and not against the Highway Authority, the first respondent. For this reason too, the application for leave ought to be refused.

(iv) Decision Being Impugned

The precise decision which is being challenged by the applicants is unclear. Clearly it is not the decision to construct the entire highway, nor is it the decision to construct the particular interchange at Bandar Utama. What the applicants appear to be challenging is merely a decision, if it may be called a decision, in rejecting the applicants' appeal and counter proposals. It appears that following the decision in *Equal Opportunities Commission's* case quoted above, this so called decision in rejecting the appeal and the counter proposals

is not amenable to *certiorari* as the first respondent was under no duty to hear such appeals, nor to consider any counter proposals.

(v) Grounds For Judicial Review

Even assuming that the proper party was cited as the respondent, the grounds upon which the decision is being challenged is unclear. In *Council of Civil Service Union v. Minister for the Civil Service (the GCHQ's* case), Lord Diplock stated the grounds on which judicial review may be sought. In that case Lord Diplock observed (at p. 950) above:

> One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds.

The scope of these grounds, including the other ground of proportionality, was recently explained by Edgar Joseph Jr FCJ in *Rama Chandran v. Industrial Court of Malaysia* [1997] 1 CLJ 147, FC, and by Jemuri CJ (Borneo) in *Ghazi bin Mohd Sawi v. Mohd bin Omar, Ketua Polis Negara Malaysia & Anor.* [1994] 2 CLJ 333.

In the present application, it is difficult to appreciate which of these grounds the applicants is relying on. Though there was a weak attempt on the part of the applicants to allege that the decision made on 16 November was procedurally improper, insofar as the first respondent did not consider the traffic problem, I am of the view that this allegation is also without merit and is bound to fail. Again, no duty was shown to exist on the part of the first respondent to consider the applicants' appeal, or a duty that the applicants ought to be heard before the appeal was rejected. In this regard, the cases dealing with planning permission, like the recent decision of the Court of Appeal in *Datuk Bandar Kuala Lumpur v. Zain Azahari bin Zainal Abidin* [1997] 2 CLJ 248 CA, or cases dealing with dismissal of employees like in *Ghazi bin Mohd Sawi v. Mohd bin Omar, Ketua Polis Negara Malaysia & Anor.* [1994] 2 CLJ 333 SC; *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1996] 1 CLJ 665 CA; *Rama Chandran v. Industrial Court of Malaysia* [1997] 1 CLJ 147 FC; *Kumpulan Perangsang Selangor Bhd v. Zaid bin Hj Mohd Noh* [1997] 2 CLJ 11, SC; *Harris Solid State (M) Sdn Bhd & Ors v. Bruno Gentil Pereira* [1996] 4 CLJ 747 CA, some of which were cited by the applicants, may be distinguished on the ground that in those cases there were either breaches of statutory duties, or that the public body had acted in violation of the principles of public law. No such duty was shown to exist in the present case, nor that the conduct of the respondents was *ultra vires* or unlawful.

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Conclusion

In the final analysis, I am of the view that leave to apply for *certiorari* ought to be refused in the present case. For reasons already stated above, it appears to be clear that the applicants have cited the wrong party as the respondent in this application. It has been shown that the first respondent is not the proper authority to determine the design of the highway, especially the various interchanges. The first respondent is merely authorised by the Highway Authority (Incorporated) Act to supervise and maintain the highways which had already been designed and approved by the government.

Secondly, even if it could be said that the first respondent had the powers to make modifications to the design of the highway, particularly to the various interchanges, the applicants have failed to establish even an arguable case that the first respondent had acted unlawfully, or had failed to follow certain procedures, or even exceeded their powers. Judicial review is to remedy a public law wrong. But no public law wrong has been shown to have been committed by the first respondent such as to make the first respondent's decision amenable to judicial review.

Again it must be emphasised that the applicants are not challenging the decision to construct the highway, or for that matter the particular interchange at Bandar Utama. What they are attempting to challenge is the rejection of their counter proposals to modify the interchange at Bandar Utama according to their own design. The counter proposals of the applicants were considered by the relevant authorities, and only after careful study and consideration were the counter proposals rejected. No procedural impropriety, illegality, or irrationality, could be imputed to the decision made to reject the applicants' counter proposals. In the final analysis, the decision to reject the counter proposals of the applicants may be loosely termed as a 'managerial decision' which is not amenable to judicial review, see *National Federation of Self Employed Small Businesses,* above.

Finally, I should observe that the granting of leave is not a mere formality. The need for leave is to filter the cases that would otherwise proceed for a full hearing. The importance of the leave-stage is aptly stated by Clive Lewis in *Judicial Remedies in Public Law, Litigation Library,* Sweet & Maxwell, 1992, at p. 230:

> The requirement of leave is designed to filter out applications which are groundless or hopeless at an early stage. The purpose is: "... to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public ... authorities might be left". As such, the aim is to prevent a wasteful

use of judicial time and to protect public bodies from the harassment (intentional or otherwise) that might arise from the need to delay implementing decisions, where the legality of such decisions has been challenged. The leave requirement also enables an individual to obtain a quick and relatively cheap judicial consideration of whether his case has any prospect of success.

Bearing the above principles in mind, I dismiss the applicants' application for leave to apply for *certiorari* as the applicants had failed to demonstrate an arguable case that grounds exist for judicial review.

Reported by WA Sharif